

Message Text

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C O N F I D E N T I A L SECTION 1 OF 4 NICOSIA 1504

E.O. 11652: GDS
TAGS: PINS, CY, US
SUBJECT: DAVIES TRIAL

SUMMARY: THIS IS THE EIGHTH CHRONOLOGICAL REPORT ON THE TRIAL HIGHLIGHTS NOT OTHERWISE REPORTED AND COVERS PROCEEDINGS OF MAY 30-31 AND JUNE 1. ALL DEFORMED PROJECTILES FROM EMBASSY CORRIDOR WHERE AMBASSADOR DAVIES FELL AND ALL CARTRIDGE CASINGS FROM EMBASSY AREA WERE DESCRIBED. NONE WERE FROM A MARSIP (LEFTIS' WEAPON). TESTIMONY OF EMBASSY FSLE HARRIS EVANGELIDES, AN EYEWITNESS TO DAVIES' SHOOTING, WAS AMBIGUOUS REGARDING TIMING OF SIGNIFICANT EVENTS AND WAS SUCCESSFULLY EXPLOITED BY DEFENSE IN ITS SUMMATION ON JUNE 1. DEFENSE MOVED FOR DISMISSAL OF ALL CHARGES, STRESSING CONFLICTS RE TIMING OF FATAL SHOTS AND OF KTIMATIAS' AND LEFTIS' PRESENCE IN EMBASSY AREA, CREDIBILITY OF STYLIANOU'S TESTIMONY, CITING HIS GRUDGE AGAINST LEFTIS AND THE THREE DIFFERENT ACCOUNTS HE HAD GIVEN CYPOL; AMBIGUITIES IN THE THEODOLITE MEASUREMENTS AND IN THE FSLE EYEWITNESS ACCOUNTS OF THE SPECIFIC LOCATION IN THE CORRIDOR OF AMBASSADOR DAVIES WHEN HE WAS SHOT; EVIDENCE THAT THERE HAD BEEN SHOOTING FROM THE EMBASSY, WHICH PROBABLY PRE-

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CIPITATED DEFENSIVE SHOOTING FROM THE DEMONSTRATORS; AND THE POSSIBILITY THAT THE FATAL SHOTS COULD HAVE COME FROM WITHIN THE EMBASSY. DEFENSE CONCLUDED THAT THE GUNMEN, BULLETS AND WEAPONS USED FOR THE KILLINGS ARE STILL NOT IDENTIFIED OR IN EVIDENCE; FURTHER, THE PLACE FROM WHERE FATAL SHOTS CAME REMAINS UNCERTAIN. PROSECUTION SPOKE LAST, SPIRITEDLY AND CONVINCINGLY CONTESTED ALL OF

DEFENSE'S CONCLUSIONS, CONTENDED THEY HAD PRESENTED A PRIMA-FACIE CASE AND THE COURT SHOULD DRAW A PRESUMPTION OF GUILT, WHICH WOULD REQUIRE THE ACCUSED TO ANSWER ALL CHARGES. END SUMMARY.

1. PROCEEDINGS OF MAY 30. THE CROSS-EXAMINATION OF INSPECTOR CHRISTOPHIDES, CYPOL BALLISTICS EXPERT, CONTINUED:

A. THEODOLITE SITINGS ESTABLISH THAT A POINT WITHIN THE SECOND-FLOOR STAIRWELL WINDOW OF THE BUILDING UNDER CONSTRUCTION, A SCRATCH ON THE FRAME OF THE FRENCH DOOR OF THE AMBASSADOR'S OFFICE WINDOW AND POINT A IN THE EMBASSY CORRIDOR WHERE THE AMBASSADOR FELL ARE ALL IN ALIGNMENT.

B. MR. MULVEY, EMBASSY SECURITY OFFICER, HAD GIVEN HIM FOUR DEFORMED PROJECTILES, FOUND NEAR POINT A WHERE THE AMBASSADOR AND MISS VARNAVA FELL.

C. A DESCRIPTION OF THE 67 CARTRIDGE CASINGS FOUND ON THE GROUND BY THE BUILDING UNDER CONSTRUCTION WAS GIVEN. FOUR WERE FROM A BROWNING PISTOL.

D. HE HAD NO PERSONAL KNOWLEDGE OF WHERE MR. MULVEY FOUND THE FOUR EXPENDED PROJECTILES. HE CONCLUDED THAT NO SHOTS FROM THE SIXTH FLOOR OF THE BUILDING UNDER CONSTRUCTION COULD HAVE STRUCK THE AMBASSADOR OR MISS VARNAVA. NO CARTRIDGE CASING WERE FOUND WHICH WERE CONFIDENTIAL

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FIRED FROM A MARSIP AUTOMATIC WEAPON (LEFTIS' WEAPON).

2. CHIEF INSPECTOR T. ANASTASSIDES, FIRE BRIGAGE, WHO HAD RETURNED TO CYPRUS THE DAY PREVIOUSLY, TESTIFIED THAT:

A. HE LEFT THE FIRE STATION AT 12:25 HOURS IN FIRE BRIGAGE VEHICLE EU-999, DRIVEN BY STELIOS STYLIANOU. THEY ARRIVED AT THE EMBASSY AT 12:35 HOURS. THERE WAS MUCH TEAR GAS AND SOME SHOOTING WHEN HE ARRIVED.

B. AT ABOUT 12:45 HOURS HE HEARD SHOTS AGAIN AND TOOK COVER. THE SHOTS CAME FROM THE DIRECTION OF THE HILTON HOTEL (BUILDING UNDER CONSTRUCTION AREA). AFTER THESE SHOTS, HE SAW AN AMERICAN COME OUT OF THE EMBASSY SHOUTING THE AMBASSADOR HAD BEEN SHOT AND CALLING FOR AN AMBULANCE. HE SAW CLERIDES ARRIVE AND THE AMBASSADOR REMOVED ON A STRETCHER BY AMERICANS AND FIREMEN. HE SAID THE AMBASSADOR WAS TAKEN OUT OF THE EMBASSY BETWEEN 12:50 AND 12:55 HOURS. END OF MAY 30 PROCEEDINGS.

3. PROCEEDINGS OF MAY 31. HARRIS EVANGELIDES, EMBASSY FSLE, WAS NOT QUESTIONED BY THE PROSECUTION. HE TESTIFIED TO DEFENSE QUESTIONING AS FOLLOWS:

A. HE WAS REMINDED HIS STATEMENT TO CYPOL SAID THAT BETWEEN 12:05 AND 12:10 HE WAS IN THE EMBASSY CORRIDOR WITH MISS VARNAVA, MRS. STELLA CHARALAMBIDOU AND MR. O'BRIEN WATCHING THE AMBASSADOR PACE BACK AND FORTH. HE HEARD SHOTS OUTSIDE AND, WHILE THE AMBASSADOR WALKED TOWARDS KSIC) HIS OFFICE HE WAS SHOT. EVANGELIDES RESPONDED THAT WHILE HE MAY HAVE SAID THAT TO THE POLICE THE TIMES HE GAVE WERE APPROXIMATE; HE WAS NOT POSITIVE. HE SAID HE WAS FRIGHTENED AND CONFUSED AT THE TIME AND COULD NOT REMEMBER THE DETAILS. HE SAID AFTER THE AMBASSADOR WAS SHOT HE ASKED MISS VARNAVA TO GET SOMETHING FROM A NEARBY OFFICE. AS SHE ROSE SHE WAS SHOT,
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AND FELL ON HIM.

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B. HE STATED HE HAD DESCRIBED THE SCENE TO THE POLICE AT A LATER DATE BUT DID NOT RECALL WHEN OR TO WHOM.

HE SAID AN AMERICAN WAS WITH HIM AT THE TIME.

C. HE SAID THAT AFTER THE AMBASSADOR AND MISS VARNAVA WERE SHOT HE HEARD NO MORE SHOOTING.

D. HE FURTHER TESTIFIED HE COULD NOT REMEMBER WHETHER HE GAVE HIS STATEMENT TO THE POLICE IN NOVEMBER 1976 OR IMMEDIATELY AFTER THE MURDER.

4. COMMENT: ON MAY 25, 1977, PHERSON WAS PRESENT WHEN THE PROSECUTORS REVIEWED THE PROPOSED TESTIMONY OF THE EYE-WITNESSES, STELLA CHARALAMBIDOU AND HARRIS EVANGELIDES, WITH THOSE PERSONS. THERE WERE MATERIAL DIFFERENCES IN THE ACCOUNTS OF THE TWO WITNESSES. BOTH WERE CONVINCED THEIR PARTICULAR ACCOUNT WAS CORRECT. THE PROSECUTORS WERE CONVINCED THE ACCOUNT OF MRS. CHARALAMBIDOU WAS THE MORE CREDIBLE. EVANGELIDES WAS CERTAIN OF HIS RECOLLECTIONS, ALTHOUGH HIS TIMING AND THE POSITION IN THE CORRIDOR OF AMBASSADOR DAVIES WHEN HE WAS SHOT WAS CLEARLY AT VARIANCE WITH OTHER, VERIFIABLE, EVIDENCE. CONFIDENTIAL

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FOR THAT REASON THE PROSECUTION DID NOT QUESTION HIM, EXCEPT IN CROSS-EXAMINATION. ON JUNE 3, WHEN THE PRESIDING JUDGE DISMISSED THE HOMICIDE CHARGES AGAINST KTIMATIAS AND LEFTIS, HE SPECIFICALLY CITED THE CONFUSION RESULTING FROM THE EVANGELIDES TESTIMONY. END COMMENT.

5. EVANGELIDES WAS THE LAST OF 50 WITNESSES TO TESTIFY. WHEN HIS TESTIMONY WAS CONCLUDED, THE DEFENSE COUNSEL MOVED THAT THE PROSECUTION HAD FAILED TO SUBMIT PRIMA-FACIE EVIDENCE AGAINST THE ACCUSED TO JUSTIFY ANY OF THE CHARGES AND SUBMITTED THAT THE ACCUSED SHOULD BE FREED. THE COURT POSTPONED ARGUMENT ON THE DEFENSE MOTION UNTIL THE FOLLOWING DAY. END OF MAY 31 PROCEEDINGS.

6. PROCEEDINGS OF JUNE 1. MANOLIS CHRISTOPHIES ADDRESSED THE COURT ON BEHALF OF KTIMATIAS. HE ARGUED THERE WAS NO PRIMA-FACIE EVIDENCE TO SUSTAIN ANY OF THE CHARGES AGAINST HIS CLIENT. THE HIGHLIGHTS OF HIS ARGUMENT WERE AS FOLLOWS:

A. THE EVIDENCE WAS UNRELIABLE AND WEAKENED FURTHER BY CROSS-EXAMINATION. THE SPECIFIC TIME KTIMATIAS WAS IN THE EMBASSY AREA WAS NOT ESTABLISHED. HIS MERE PRESENCE WAS ESTABLISHED, NOT HIS TAKING PART IN THE EVENTS.

B. ALTHOUGH STYLIANOU AND LAMBRIANIDES SAID HE WAS

FIRING, INSPECTOR IERIDES, WHO WAS THE CLOSEST PERSON TO KTIMATIAS, DID NOT TESTIFY TO THAT EFFECT. MAJOR TSANGARIS SAID HE THOUGHT KTIMATIAS WAS FIRING, BUT HE ALSO SAID INSPECTOR IERIDES HAD BEEN IN A BETTER POSITION TO SAY WHETHER KTIMATIAS HAD BEEN FIRING. INSPECTOR AVGOUSTIS EFSTATHIOU CONTRADICTED THE LAMBRIANIDES TESTIMONY ABOUT KTIMATIAS' ALLEGED FIRING. (COMMENT: IERIDES AND EFSTATHIOU ARE KNOWN TO BE CONFIDENTIAL

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STRONG EOKA-B SUPPORTERS. BOTH ARE STILL UNDER SUSPENSION FROM CYPOL FOR THAT REASON. END COMMENT.)

C. TESTIMONY THAT KTIMATIAS WENT INTO THE BUILDING UNDER CONSTRUCTION SHOULD BE INTERPRETED THAT HE MOVED TOWARDS THAT BUILDING FOR PROTECTION, NOT INTO IT.

D. THE EVIDENCE FROM STYLIANOU THAT KTIMATIAS WAS SEEN AT THE SIX-FLOOR WINDOW OF THE BUILDING UNDER CONSTRUCTION IS OBVIOUSLY UNRELIABLE, AND NO COURT COULD TAKE IT SERIOUSLY.

E. WE AGREE HE WAS CARRYING A WEAPON, BUT IT WAS LAWFUL POSSESSION IN VIEW OF HIS STATUS WITH THE POLICE AND WITH THE NATIONAL GUARD AT THAT TIME.

F. THERE IS EVIDENCE THAT THE MARINE SECURITY GUARDS TOOK THE OFFENSIVE BY THROWING TEAR GAS, SMOKE GAS AND BY SHOOTING FROM THE EMBASSY. MANY WITNESSES SAID THE CROWD RETREATED WHILE SHOUTING, "THEY ARE SHOOTING AT US."

G. ANY SHOTS FIRED BY THE DEMONSTRATORS WERE FOR DEFENSE AND FOR PROTECTION PURPOSES IN VIEW OF THE FIRING FROM THE EMBASSY.

H. THE GUNMEN, THE BULLETS, THE WEAPONS THAT WERE USED FOR THE KILLINGS STILL REMAIN UNKNOWN. THE PLACE FROM WHERE THE FATAL SHOTS CAME REMAINS UNCERTAIN.

I. WHAT HAS BEEN PROVED BEYOND A DOUBT IS THAT FROM THE PLACE KTIMATIAS WAS SEEN IT IS NOT POSSIBLE TO HAVE FIRED THE SHOTS WHICH KILLED THE AMBASSADOR AND MISS VARNAVA.

J. THE PROSECUTION DID NOT ESTABLISH THAT KTIMATIAS
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MET OR TALKED WITH LEFTIS AT THE SCENE.

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K. SECTIONS 20 AND 21 OF THE CRIMINAL CODE (CONCERTED ACTION WHICH RESULTS IN A FELONY - ALL ARE RESPONSIBLE) DOES NOT APPLY, SINCE THE IDENTITY OF THE KILLERS IS ENTIRELY UNCERTAIN.

L. THE TIME OF THE KILLINGS, AS PUT FORTH BY EMBASSY WITNESSES STELLA CHARALAMBIDOU AND HARRIS EVANGELIDES, WAS BETWEEN 12:15 AND 12:30 HOURS. IF IT IS ADMITTED KTIMATIAS WAS FIRING, HE DID SO AROUND 1:00 P.M., AFTER THE KILLINGS. THE PROSECUTION HAS NOT PROVED THE TIME OF THE KILLINGS OR THE TIME KTIMATIAS WAS FIRING.

7. DEFENSE COUNSEL INDIANOS, SPEAKING FOR LEFTIS, MADE THESE POINTS:

A. LEFTIS HAD COME TO THE EMBASSY ON HIS OWN ACCORD TO HELP DISPERSE THE DEMONSTRATORS. HE CARRIED A MARSIP AUTOMATIC WEAPON, BUT LAWFULLY IN HIS CAPACITY AS A NATIONAL GUARD VOLUNTEER.

B. THERE IS NO PROOF OF NAY CONCERTED ACTION BETWEEN KTIMATIAS AND LEFTIS AND LEFTIS WAS NOT SEEN BY ANYONE
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TO BE FIRING HIS WEAPON. THE STYLIANOU TESTIMONY WAS COMPLETELY DISCREDITED BY CROSS-EXAMINATION AND THE CHARACTER OF STYLIANOU MUST BE TAKEN INTO ACCOUNT.

C. LEFTIS SERVED IN THE NATIONAL GUARD DURING THE TURKISH INVASION, VOLUNTEERING FOR SERVICE ON JULY 20, 1974, AND BEING RELEASED ON AUGUST 27, 1974. AZINAS CLEARLY IMPLIED THAT ALL GUARDSMEN ON ACTIVE DUTY ON AUGUST 19, 1974 WERE AUTHORIZED TO CARRY THEIR WEAPONS. THEREFORE, LEFTIS CANNOT BE CHARGED WITH UNLAWFUL POSSESSION OF FIREARMS.

8. COUNSEL ALEKOS EVANGELOU, FOR THE PROSECUTION, PRESENTED THESE ARGUMENTS:

A. PRIMA-FACIE EVIDENCE HAS BEEN SUBMITTED FOR ALL COUNTS AND THE COURT SHOULD DRAW A PRESUMPTION OF GUILT AND DIRECT THE ACCUSED TO OFFER THEIR DEFENSE.

B. MR. YACOVOU, PASYDY, STELLA CHARALAMBIDOU, OF THE EMBASSY, AND OTHER WITNESSES SAY THE RIOTS STARTED AROUND 12 NOON. WHEN THE RIOTING INTENSIFIED AND VEHICLES WERE SET AFIRE THE MARINES USED TEAR GAS TO DISPERSE THE RIOTERS. THE FIRE BRIGADE ARRIVED AT 12:35, ACCORDING TO THREE PROSECUTION WITNESSES, INCLUDING STYLIANOU. MANY WITNESSES, INCLUDING STYLIANOU, HEARD SHOTS FROM THE BUILDING UNDER CONSTRUCTION DIRECTED TOWARDS THE AMBASSADOR'S OFFICE WINDOW. TWELVE SHOTS PENETRATED HIS OFFICE, THREE CONTINUED DOWN THE CORRIDOR; ONE KILLED THE AMBASSADOR AND ONE KILLED MISS VARNAVA.

C. WE REGARD THE EVIDENCE OF MRS. CHARALAMBIDOU AS HONEST AND TRUTHFUL AND REQUEST THE COURT TO ACCEPT IT COMPLETELY. THE TESTIMONY OF MR. EVANGELIDES CONCERNING THE TIMING OF SIGNIFICANT EVENTS SHOULD BE DISCREDITED,
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SINCE HE HAS ADMITTED HIS IS UNCERTAIN IN HIS RECOLLECTIONS.

D. WE HAVE POSITIVE PROOF THAT THE AMBASSADOR'S BODY WAS EXAMINED BY DR. CHRISTODOULAKIS AT 1300 HOURS. WE THEREFORE CONCLUDE THE TIME OF DEATH WAS AROUND 1250 HOURS. WE ASSERT THE DEATH MUST HAVE BEEN AFTER 1235 HOURS, BECAUSE OF OFFICIAL RECORDS KEPT BY THE

FIRE BRIGADE REGARDING THEIR TIME OF ARRIVAL AT THE
SCENE AND THEIR TESTIMONY CONCERNING THEIR OBSERVATIONS.

9. EXTENT OF PARTICIPATION OF KTIMATIAS: WHILE AT
POLICE HEADQUARTERS AROUND NOON, HE HEARD SHOTS FROM
THE EMBASSY AREA. HE DROVE TO THE EMBASSY, REMOVED AN
AUTOMATIC WEAPON AND TWO MAGAZINES FROM HIS VEHICLE, AND
WAS SEEN NEAR THE BUILDING UNDER CONSTRUCTION. SUBSE-
QUENT TO ABOUT 1235 HOURS THERE ARE DISCREPANCIES IN
THE EVIDENCE: IERIDES SAW HIM IN A FIRING POSITION, BUT
NOT FIRING; TSANGARIS SAW HIM CHANGE THE MAGAZINE;
LAMBRIANIDES SAW HIM FIRING. THIS ESTABLISHES THAT
KTIMATIAS WAS RIOTING AND WAS UNLAWFULLY POSSESSING AND
USING AN AUTOMATIC WEAPON PRIOR TO 1235 HOURS. REGARD-
ING HOMICIDE CHARGES, IT IS THE TESTIMONY OF INSPECTOR
CHRISTOPHIDES, THE CYPOL BALLISTICS EXPERT; DR. STAVRINOS,
THE PATHOLOGIST WHO CONDUCTED THE POST MORTEM; AND
EYEWITNESS STELLA CHARALAMBIDOU THAT THE FATA SHOTS
CAME FROM THE BUILDING UNDER CONSTRUCTION. THE DEFENSE
CONTENTION THAT THE KILLING MAY HAVE TAKEN PLACE FROM
WITHIN THE EMBASSY IS AN ENTIRELY GROUNDLESS ALLEGATION.
THE ACCUSED WERE SEEN IN THE BUILDING UNDER CONSTRUCTION
AND AT THE SIXTH-FLOOR WINDOW. THE ACCUSED WERE PART
OF A RIOT, POSSESSED WEAPONS, AND MUST HAVE FORESEEN
THE CONSEQUENCES THAT SOMEONE COULD BE KILLED OR INJURED.
THE EVIDENCE OF STYLIANOU IS CORROBORATED IN PART BY
OTHER EVIDENCE AND HAS NOT BEEN DISCREDITED BECAUSE OF
A POSSIBLE GRUDGE AGAINST LEFTIS. IF THAT WERE HIS
MOTIVATION, HE HAD NO REASON TO IMPLICATE KTIMATIAS
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AND SAVVA. STYLIANOU'S EVIDENCE SHOULD BE ACCEPTED.

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10. EXTENT OF PARTICIPATION OF LEFTIS: STYLIANOU SAW LEFTIS IN THE EMBASSY AREA WITH AN AUTOMATIC WEAPON WEARING A MILITARY CAMOUFLAGE UNIFORM. LEFTIS WASHED HIS FACE AT THE FIRE ENGINE, THEN ENTERED THE BUILDING UNDER CONSTRUCTION WITH KTIMATIAS. STYLIANOU HEARD SHOTS, THEN SAW KTIMATIAS AND LEFTIS AT THE SIXTH-FLOOR WINDOW. THE POLICE BALLISTICS EXPERT SAID AT LEAST ONE SHOT WHICH ENTERED THE AMBASSADOR'S OFFICE COULD HAVE COME FROM THAT WINDOW. LEFTIS ADMITS HIS PRESENCE IN THE AREA. WE SUBMIT LEFTIS DID NOT GO TO THE EMBASSY FOR A LAWFUL PURPOSE. NO ONE ORDERED HIM TO DO SO, AS HE HAS CLAIMED. WHY, THEN, DID HE LIE? HE SHOULD BE CALLED ON TO GIVE AN ANSWER. LEFTIS WAS AT THE EMBASSY AROUND 1235 HOURS WHEN OTHER DEMONSTRATORS WERE RETREATING, YET HE INSISTED ON PROCEEDING TO THE EMBASSY. HE MUST BE CALLED ON TO EXPLAIN HIS PARTICIPATION IN THE RIOTING AND HIS CARRYING AND USING HIS AUTOMATIC WEAPON. END OF JUNE 1 PROCEEDINGS.
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